



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7650950

Date: MAR. 10, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sterilization supervisor, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition and dismissed a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.¹

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

¹ We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁵ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a clerk in the College of Dental Medicine at [redacted] University. After filing the petition, he presented a March 22, 2018 letter from [redacted] University indicating that he was "being promoted to the position of Assistant Supervisor, Sterilization in the College of Dental Medicine, beginning on March 26, 2018." The record also includes a November 5, 2018 letter from [redacted] stating that the Petitioner has worked for its [redacted] surgical center since June 19, 2018, but this letter did not identify his position or job duties.⁶

Regarding the Petitioner's claim of eligibility under *Dhanasar's* first prong, he indicated that his proposed endeavor involves working "as an infection control manager and material scientist." He explained that his proposed work includes "microbiological studies and research activities in the field of microbiology," "pre-surgical and post-surgical management of patients," and "implementation of protocols for managing operating rooms." In addition, the Petitioner asserted that his undertaking is aimed at "surgical equipment acquisition and supply chain," "high level management of sterilization and infection control," "exposure and quality control procedures," and "education and training in infection control." He further stated that he seeks to pursue a "Ph.D. in microbial science and infection prevention."

The record includes a report indicating that increases in hospital acquired infections and advancements in sterilization and disinfection technologies are driving growth in the global infection control market. The Petitioner also provided an article discussing how improperly sterilized surgical instruments are harming U.S. patients. The record therefore supports the Director's determination that the Petitioner's proposed endeavor relating to infection control management has substantial merit.

In denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not shown that his proposed activities as an infection control manager "have national implications or otherwise stand to

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁵ The Petitioner presented the official academic record for his Bachelor of Dental Surgery degree (2010) from the University of [redacted] and an academic credentials evaluation indicating that the aforementioned degree is the foreign equivalent of the U.S. degree of Doctor of Dental Surgery.

⁶ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

impact the field more broadly, outside of [his employer].” In addition, the Director concluded that the Petitioner had not demonstrated that his proposed doctoral studies stand to “have a prospective potential benefit outside of the institution or university where he decides to study.” For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently established the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable infection control and sterilization services for his employer, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his employers and their patients to impact his field or the U.S. healthcare industry more broadly at a level commensurate with national importance.

Furthermore, with respect to the Petitioner’s proposed pre-surgical and post-surgical management of patients, while this endeavor has substantial merit, the record does not establish that his clinical work would impact the field of surgery or the healthcare field more broadly, as opposed to being limited to the patients at medical center where he serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner’s clinical work does not meet the “national importance” element of the first prong of the *Dhanasar* framework.

Additionally, regarding the Petitioner’s proposed work as a material scientist, a researcher in the field of microbiology, or a Ph.D. student in an academic program relating to microbial science and infection prevention, he does not discuss the capacity in which he will work in these areas or the specific nature of his future U.S. research endeavors. Nor has he identified the material science or microbiology research projects he is proposing to undertake or the capacity in which he intends to pursue those projects in the United States. Without additional information and evidence, the Petitioner has not demonstrated that his prospective work as a material scientist, microbiology researcher, or Ph.D. student stands to have broader implications rising to the level of having national importance. He therefore has not shown that this work satisfies the “national importance” requirement of *Dhanasar*’s first prong.

Finally, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient documentation regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's activities would reach the level of "substantial positive economic effects," so as to demonstrate their national importance under the first prong of *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavors as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.